

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SAFE HAVEN HOME CARE, INC.,)	
EVERGREEN HOMECARE SERVICE)	
OF NY INC., ELIM HOME CARE)	
AGENCY, LLC, DHCARE)	Civil Action No.:
HOMEHEALTH, INC., SILVER LINING)	
HOMECARE AGENCY, AND ANGEL)	
CARE, INC.)	
Plaintiffs,)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
XAVIER BECERRA, in his official)	
capacity as Secretary of the United States)	
Department of Health and Human Services,)	
UNITED STATES CENTERS FOR)	
MEDICARE & MEDICAID SERVICES,)	
CHIQUITA BROOKS-LASURE, in her)	
official capacity as Administrator of the)	
U.S. Centers for Medicare and Medicaid)	
Services, NEW YORK STATE)	
DEPARTMENT OF HEALTH, MARY T.)	
BASSETT, in her official capacity as)	
Commissioner of the New York State)	
Department of Health, BRETT R.)	
FRIEDMAN, in his official capacity as)	
Medicaid Director of the New York State)	
Department of Health)	
Defendants.)	

**Declaration of Rouandy Pascal in Support of Plaintiffs’ Motion for
Temporary Restraining Order and Preliminary Injunction**

I, Rouandy Pascal, hereby declare under penalty of perjury:

1. I am the CEO, Administrator, and Founder of Safe Haven Home Care, Inc. (“Safe Haven”), a Licensed Home Care Services Agency (“LHCSA”), located at 105-26 Flatlands 1st Street, Brooklyn, New York 11236.
2. I founded Safe Haven as a corporation operating in New York State in October 2008.

3. Safe Haven is licensed by the New York State Department of Health and provides services to Medicaid beneficiaries. Its operating certificate number is 1800L001.
4. Safe Haven is a stand-alone LHSCA, meaning that it is not financially linked or linked by ownership to other healthcare providers.
5. I have been a Registered Nurse for 31 years and have worked in home health care for about 30 years. I also hold two Masters of Science degrees, one in Nursing Administration and another in Nursing Informatics.
6. As a LHSCA, Safe Haven provides Medicaid-covered personal care services.
7. Safe Haven serves the following counties: Bronx, Kings, New York, Queens and Richmond.
8. Because of my patient-centered philosophy, I intentionally have kept Safe Haven as a smaller, local agency in New York City, so that I can respond to each client's needs in a way that no big agency can.
9. I specifically opened my own agency after working for big home care agencies and seeing firsthand how the agencies' needs came first, before the patients' needs.
10. I am closely involved in all aspects of Safe Haven's services to ensure consistent quality and foster good relationships with patients.
11. I personally open all start of cares in order for me to have a real picture of each client's needs.
12. Each client has my personal cell phone number and knows that I am available 24/7.
13. Safe Haven's multicultural employees are able to serve a multicultural and diverse community. Specifically, I speak English, Creole and French. Safe Haven currently employs three direct care workers that speak Creole and several that speak Spanish.

14. Safe Haven uniquely caters to the Creole and Hispanic community that includes persons from Haiti or of Haitian descent, and persons of Caribbean or Hispanic descent.
15. Because of its smaller size, Safe Haven is able to provide personal, individualized attention that has led to many happy consumers who refer other community members to Safe Haven.
16. In its last survey completed by the Department of Health in December 2020, Safe Haven had a 100% deficiency-free survey.
17. Safe Haven services approximately 233 clients.
18. Safe Haven currently employs approximately 268 direct care workers and 5 administrative employees.
19. Staffing for LHCSAs, including Safe Haven, is already thin because of (1) employees leaving the workforce due to COVID-19, and (2) others leaving the workforce after the COVID-19 vaccine mandate because they cannot work as direct care workers unless they are fully vaccinated and either choose not to get vaccinated or are not yet fully vaccinated. Specifically, Safe Haven lost ten (10) employees who left the workforce for fear of COVID-19 and lost fifteen (15) employees because of the vaccine mandate. Therefore, competition is stiff for direct care workers.
20. I hoped that Safe Haven would be eligible for the additional funds under the American Rescue Plan Act of 2021, section 9817 and offered through NYSDOH's Spending Plan Implementing those funds. Specifically, I hoped Safe Haven would be eligible for funds under the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal, which was to be available to all LHCSAs according to the July 8, 2021 Spending Plan.

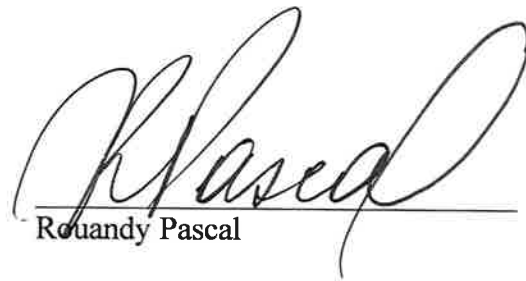
21. I understand that New York State's Department of Health is now limiting the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal to only the top one-third of LHCSAs based on 2019 managed care revenue.
22. I became aware that other LHCSAs received letters dated on or about December 23, 2021 from the New York State Department of Health, Division of Long Term Care, Office of Health Insurance Programs, notifying the agencies that they are potentially eligible for funding under the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness investment. The letter asked the LHCSA to complete an online questionnaire before January 14, 2022 and asked the LHCSA to register in advance to attend an informational webinar on January 6, 2022. Safe Haven did not receive one of these letters and was not invited to complete a questionnaire or attend the webinar.
23. I understand that the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal would provide funds so that the eligible LHCSAs can offer higher wages, recognition and retention bonus, enhanced job benefits, such as health insurance for part-time and full-time workers, and paid training time.
24. The designation of the "provider class" so that only the top one-third of LHCSAs are eligible for these additional funds under the American Rescue Plan Act of 2021, Section 9817 will cause irreparable harm to Safe Haven for several reasons.
25. Eligible LHCSAs will be able to offer better compensation and benefits packages than Safe Haven could afford to offer because eligible LHCSAs can use the additional funds to offer bonuses, job benefits, and paid training time.

26. I understand that some of my competitor LHCSAs may receive millions of dollars in extra funding next month through the NYSDOH's first directed payment.
27. Smaller LHCSAs, like Safe Haven, are already disadvantaged because larger LHCSAs have more favorable terms (such as higher rates) with the Managed Long Term Care Plans. Giving these additional funds to only the top one-third of LHCSAs by 2019 managed care revenue only further disadvantages smaller LHCSAs, including Safe Haven.
28. Safe Haven's profit margin is already razor thin. For a home health aide, Safe Haven pays \$15 per hour, plus \$4.09 for wage parity, meaning a total of \$19.09 per hour. Under one contract with an MLTC Plan, Safe Haven receives \$24.64 per hour. However, Safe Haven also has to pay for taxes, workers' compensation, and many other expenses. In addition, under that contract, Safe Haven has not received an increase in rate for 4 to 5 years, despite the rising costs of COVID-related expenses and inflation, increasing the price of gas, rent, etc.
29. This will mean that the eligible LHCSAs will recruit Safe Haven's employees and that Safe Haven will lose its direct care workers to those LHCSAs that received the additional funding and can offer better compensation and benefits packages.
30. Safe Haven will suffer irrevocable financial losses because it will not have the direct care workers to provide services to Safe Haven's clients.
31. This would not only negatively impact Safe Haven, but would negatively impact the patients with whom Safe Haven has built a relationship of trust and quality care.

32. If Safe Haven is no longer able to staff its cases, this will result in reputational damage and clients will no longer recommend Safe Haven for services. Safe Haven relied on those recommendations to grow its business in the past.
33. The additional funding for which Safe Haven is not currently eligible can also be used for technologies that increase employee satisfaction, such as technologies that enable aides to maximize care hours to achieve full-time work.
34. Safe Haven will be irreparably harmed because it will lose employees to competitors who are better equipped with the technology to ensure the employees more hours.
35. Again, Safe Haven will suffer irrevocable financial losses because it could no longer retain its employees and, without employees, ultimately could no longer provide services to its clients.
36. The Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal is supposed to allow eligible LHCSAs to develop “strategies to recruit and retain a racially and ethnically diverse and culturally competent workforce, with adequate levels of demographic and linguistic representation based on historical patient populations.”
37. As I stated, Safe Haven uniquely caters to the Creole-speaking community because of its knowledge of the language and culture. However, if other eligible LHCSAs received funding which will enable them to take my employees, Safe Haven could lose employees with the unique language abilities and cultural knowledge, thus negatively impacting Safe Haven’s ability to cater to its unique population of beneficiaries. This will negatively impact Safe Haven’s reputation, business opportunities, and what we have worked so hard to build.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 18, 2022
Brooklyn, New York



Rouandy Pascal